

**U.S. Department of the Interior
Bureau of Land Management**

**Environmental Assessment
DOI-BLM-NV-S010-2014-0121-EA
April 2015**

Right-of-Way for Road and Drainage and Related Facilities on Federal Land

APPLICANT

Clark County

GENERAL LOCATION

The proposed Rights-of-Way (ROW) Clark County Roadway and Drainage along a portion of Oleta Avenue generally located between Westwind Street and Lindell Road.

BLM CASE FILE SERIAL NUMBER(S)

N-92992

PREPARING OFFICE

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Chapter 1. Introduction

Environmental Assessment- Right-of-Way for Road and Drainage and Related Facilities on Federal Land

1.1. Identifying Information:

DOI-BLM-NV-S010-2014-0121-EA

1.1.1. Title, EA number, and type of project:

Right-of-Way for Road and Drainage and Related Facilities on Federal Land

EA Number: DOI-BLM-NV-S010-2014-0121-EA

Right-of-Way

1.1.2. Location of Proposed Action:

The proposed Clark County Right-of-Way (ROW) for roadway and drainage is along a portion of Oleta Avenue generally located between Westwind Street and Lindell Road, in Clark County, Nevada.

ROW

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,

Sec. 24, NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

Consisting of approximately 0.23 acres.

1.1.3. Name and Location of Preparing Office:

Department of the Interior Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Dr., Las Vegas, Nevada 89130

1.1.4. Identify the subject function code, lease, serial, or case file number:

Case file number N-92992

1.1.5. Applicant Name:

Clark County Department of Public Works

1.1.6. Existing NEPA Documentation:

The following documents are tiered to as appropriate for indirect site specific and cumulative analysis:

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Record of Decision for the Approved Las Vegas Resource Management Plan and Final Environmental Impact Statement (EIS) signed October 5, 1998 (RMP).

Las Vegas Valley Disposal Boundary EIS, Record of Decision (ROD) signed December 23, 2004, available at www.nv.blm.gov/lvdiseis.

1.2. Purpose and Need for Action:

The purpose of the action is to issue a ROW to Clark County for roadway and drainage along a portion of Oleta Avenue for public access.

The need for the project is the Bureau of Land Management's (BLM) mandate to comply with the Federal Lands Policy Management Act and 43 CFR 2800 regulations.

1.3. Scoping, Public Involvement, and Issues:

Internal scoping was done for the project and the following concerns were raised:

- Potential impacts to migratory birds if construction/disturbance occurs during the bird breeding season;
- The proposed project is located in desert tortoise habitat, a federally listed threatened species.

This proposal has been reviewed by BLM resource team members. Their comments and evaluations are included in this Environmental Assessment (EA).

A summary of this EA is available for review by the public on the internet http://www.blm.gov/nv/st/en/fo/lvfo/blm_information/nepa.html under NEPA number: DOI-BLM-NV-S010-2014-0121-EA.

Chapter 2. Proposed Action and Alternatives

2.1. Description of the Proposed Action

ALTERNATIVE NUMBER 1 - PROPOSED ACTION;

The proposed roadway and drainage ROWs, includes a portion of the south side of Oleta Avenue generally located between Westwind Street and Lindell Road. This portion of roadway and drainage will provide service to residential, commercial, and municipality development in the area. The proposed roadway and drainage facilities are designed to accommodate the anticipated public needs associated with current and planned development in the area, and comply with the current Clark County planning for the area.

2.1.1. ROW

The area proposed for the ROW for roadway and drainage is approximately 330 feet long and 30 feet wide (0.23 acres) along the south side of Oleta Avenue

Initially the roadway improvements will consist of grading and AC paving. Additional improvements such as public safety measures, curb, gutter, sidewalks, etc. will be installed as needed to support development in the area.

The drainage facilities will include the installation of culverts, pipes, earthen berms/channels, rip-rap, or other materials/structures, as may be required to convey, divert, and/or reduce storm water flows and protect the roadway.

2.1.2. Construction

Pre-construction activities are anticipated to begin upon issuance of the ROW. Construction is expected to begin as soon as possible and take approximately 12 months to complete. Grading and/or blading of the proposed ROW is anticipated in order to prepare the surface for paving, trenching, and to achieve a slope ratio of no greater than 4:1. The installation of the drainage facilities, including culverts, pipes, earthen berms/channels, rip-rap, or other materials/structures, as may be required to convey, divert, and/or reduce storm water flows will be constructed within the requested ROW. Upon completion of the grading/blading and trenching is completed approximately 3,795 ft² of 4" Type II for road base and approximately 3,795 ft² of 3" AC pavement will be installed. . All construction activities will be confined to the area within the ROW area.

The general sequence of construction activities will include:

- Surface Preparation (grading and scraping)
- Installation of underground pipes, culverts, etc.
- Installation of road base
- AC Pavement

2.2. Description of Alternatives Analyzed in Detail

ALTERNATIVE NUMBER 2- NO ACTION:

The No Action alternative would result in the BLM not issuing a ROW to Clark County for roadway and drainage along a portion of Oleta Avenue. Under this alternative Clark County would not be able to provide safe and reliable public access to support current and planned development in the area.

2.3. Alternatives Considered but not Analyzed in Detail

ALTERNATE NUMBER 3:

No other alternatives were considered.

2.4. Conformance

The proposed action is in conformance with the Las Vegas Resource Management Plan (RMP) decisions LD-2, and LD2-a, approved on October 5, 1998.

- RW-1 - "Meet public demand and reduce impacts to sensitive resources by providing an orderly system of development for transportation, including legal access to private inholdings, communications, flood control, major utility transmission lines, and related facilities."
- RW-1-h - "All public land within the planning area, except as stated in RW-1-c through RW-1-g, are available at the discretion of the agency for rights-of-way under the authority of the Federal Land Policy and Management Act."

ROW's are allowable on BLM administered lands per Title V of the FLPMA and the BLM regulations (43 CFR 2800), at the discretion of the Secretary of the Interior or his/her delegated officer.

Additionally, the proposed action should be in conformance with the Nevada Revised Statutes (NRS 534).

Chapter 3. Affected Environment:

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The following table identifies those resources which may or may not be present within the proposed project area. Only those resources identified as being Present/May Be Affected are analyzed further in this EA.

| Supplemental Authority | Not Present | Present/ Not Affected | Present/May Be Affected | Rational |
|---|-------------|-----------------------|-------------------------|--|
| Air Quality | | X | | Ensure dust control permit is obtained from DAQ for all soil disturbing activities of .25 acres or greater, in the aggregate and all permit stipulations are in compliance for the duration of the project(s). |
| Area of Critical Environmental Concern (ACEC) | X | | | The proposed project area is not within an ACEC or any critical desert tortoise habitat. |
| Cultural/ Historical | X | | | A cultural survey of the area was conducted in support of the 2004 Valley Disposal Boundary EIS. No historical properties were found. The Nevada State Historic Preservation Office (SHPO) concurred on the adequacy of the report. |
| Paleontological Resources | X | | | No fossil-bearing geological strata will be adversely affected by the undertaking as proposed. |
| Environmental Justice | | X | | No minority or low income group would be disproportionately impacted by health or environmental effects. |
| Farmlands Prime or Unique | X | | | There are no prime or unique farmland designations in the District. |
| Invasive Species/ Noxious Weeds | | X | | The proposed action is within the Las Vegas Valley Disposal Boundary and was analyzed under the associated EIS. Standard weed BMP's must be implemented during construction and maintenance of the project. If noxious weed infestations are found on site they should be reported to the BLM Weed Coordinator. It will be the responsibility of the proponent to control any invasive species spread onto adjacent BLM lands outside the disposal boundary through project actions. |

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| Supplemental Authority | Not Present | Present/ Not Affected | Present/May Be Affected | Rational |
|--|-------------|-----------------------|-------------------------|---|
| Native American Religious Concerns | | X | | An ethnographic assessment was conducted in support of the 2004 Valley Disposal Boundary EIS by the Chambers Group. The Nevada State Historic Preservation Office (SHPO) concurred on the adequacy of the report and consultation efforts. No Native American concerns were identified for this portion of the Las Vegas Valley. |
| Floodplains | X | | | Project is located within the Las Vegas Valley and CCRFCD responsible for flood control. Located outside of FEMA designated floodplain. |
| Riparian/ Wetlands | X | | | No permanent surface waters or wetlands exist in or near the project area. |
| Threatened, Endangered or Candidate Plant Species | X | | | Based on known locations and habitat requirements, Threatened, Endangered or Candidate plant species are not present. |
| Threatened, Endangered or Candidate Animal Species | | | X | The above action has a may affect determination for the threatened desert tortoise (<i>Gopherus agassizii</i>). This project will have no effect on any other federally listed species or designated critical habitat. |
| Migratory Birds | | X | | Migratory birds, including BLM sensitive species, western burrowing owl (<i>Athene cunicularia</i>), may be present on the project site. Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 et. seq.) protects migratory birds and their nests (nests with eggs or young). 1) To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs from |

| Supplemental Authority | Not Present | Present/ Not Affected | Present/May Be Affected | Rational |
|---|-------------|-----------------------|-------------------------|---|
| Migratory Birds (Continued) | | X | | February 15th through August 31st. 2) If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge. |
| Wastes (hazardous or solid) | X | | | Not Present, but do include the standard stipulations in the grant document. |
| Water Resources/ Quality (drinking/ surface/ground) | | X | | No new issues as this project is located in the valley disposal boundary and the general area is already disturbed. |
| Wild & Scenic Rivers | X | | | Resource not present. |
| Wilderness/WSA | X | | | Resources not present. |
| Woodlands/Forestry | X | | | Cactus and yucca are considered government property and are regulated under the Nevada BLM forestry program. Only minimal surface disturbance will occur. Cactus and yucca may be present within the project impact area. To the extent practical, cactus and yucca within the project area should be avoided by this action. If cactus and yucca are unable to be avoided, due to the minimal amount of disturbance associated with this project, overall impacts would be considered negligible. Salvage, disposal through a sale, or other impact minimization measure are |

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| Supplemental Authority | Not Present | Present/ Not Affected | Present/May Be Affected | Rational |
|--|-------------|-----------------------|-------------------------|---|
| Woodlands/Forestry (Continued) | X | | | not necessary. All cactus and yucca that might be impacted by this action must be disposed of in an off-site trash receptacle. |
| Livestock Grazing | X | | | The proposed action area is not located in any authorized grazing allotments. |
| Green House Gas Emissions (Climate Change) | | X | | Currently there are no emission limits for suspected Greenhouse Gas (GHG) emissions, and no technically defensible methodology for predicting potential climate changes from GHG emissions. However, there are, and will continue to be, several efforts to address GHG emissions from federal activities, including BLM authorized uses. |
| Geology/ Minerals | | X | | No issues. |
| Lands/Access | X | | | This project is not located in or near a utility corridor. |
| BLM Natural Areas | X | | | Resource not present. |
| Rangeland Health Standards | X | | | Four fundamentals of rangeland health are listed in Title 43 CFR § 4180.1. These include watersheds, ecological processes, water quality, and habitats. Potential impacts to these values are analyzed as part of the vegetation, hydrology, wildlife and federally listed species sections and are not analyzed in this section. |
| Socio-Economic values | | X | | This project will not disproportionately impact social or economic values. |
| Hydrologic conditions | | X | | No new issue as this project is located in the valley disposal boundary and the general area is already disturbed. |
| Soils | | X | | No new issue as this project is located in the valley disposal boundary and the general area is already disturbed. |

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| Supplemental Authority | Not Present | Present/ Not Affected | Present/May Be Affected | Rational |
|--|-------------|-----------------------|-------------------------|--|
| Vegetation Excluding Federally Listed Species | X | | | There are no known occurrences of BLM sensitive species within the project area; therefore, no impacts to BLM sensitive species are expected. |
| Visual Resources | X | | | The proposed action is in VRM Class IV, which allows for high levels of change to the existing landscape. Change may dominate the view of the casual observer. Since the proposed action is adjacent to existing developments, it is not expected to dominate the view of the casual observer. Please ensure that change repeats the basic elements of form, line, color, and texture found in the natural landscape to the extent practical. No issues. |
| Recreation | | X | | Proposal is located in the Las Vegas Valley and overlaps portions of existing road and utility right of ways. No issues. |
| Fuels/Fire Management | | X | | Compliance with fire restrictions current at time of project implementation will mitigate any risks introduced by the proposed actions. Specific, noncompliant activities may be waived on a case by case basis by a line officer after review and approval by the Fire Management Officer. |
| Fish and Wildlife Excluding Federally Listed Species | | X | | Wildlife species in the general area include small mammals, rodents, birds and reptiles. Additionally, the BLM sensitive species western burrowing owl, Mojave shovel-nosed snake, desert glossy snake, Mojave Desert sidewinder may be present in the general area. The proposed action project area is disturbed and no long constitutes suitable wildlife habitat. Although the amount of new surface disturbance is minimal (0.04 acres), |

| Supplemental Authority | Not Present | Present/ Not Affected | Present/May Be Affected | Rational |
|---------------------------------------|-------------|-----------------------|-------------------------|---|
| | | | | these species may be found on the adjacent undisturbed lands and could wander into the proposed project area. The primary direct impact of the proposed action on wildlife would be mortality resulting from construction activities. Wildlife species in the general area are common and widely distributed throughout the area and the loss of some individuals and/or their habitat would have a negligible impact on populations of the species throughout the region. Impacts to BLM Sensitive Species are not anticipated to lead to further decline of the species range wide. No Special Stipulations are required. |
| Wild Horse and Burros | X | | | This project is not located in an active herd management area, there will be no impacts to wild horses or burros. |
| Lands with Wilderness Characteristics | X | | | There are no lands managed for wilderness characteristics. |

3.1 Threatened, Endangered Species

Threatened and Endangered (T&E) species are placed on a federal list by the U. S. Fish and Wildlife Service (USFWS) and receive protection under the Endangered Species Act of 1973, as amended. The only T&E species known to occur in the vicinity of the project area is the threatened desert tortoise (*Gopherus agassizii*). In the Mojave region, the desert tortoise occurs primarily on flats and bajadas with soils ranging from sand to sandy-gravel characterized by scattered shrubs and abundant inter-shrub space for herbaceous plant growth. They are also found on rocky terrain and slopes.

The project site falls within low density tortoise habitat. Desert tortoise survey data conducted for the preparation of the Disposal Boundary EIS found tortoise burrows within 0.5 miles of the project site. There is still relatively undisturbed parcels of land adjoining and near the project

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area that could still contain suitable tortoise habitat. Because tortoises have been found in the vicinity and undisturbed habitat exists in and adjacent to the project site, there is potential for tortoises to wander into the project area.

Chapter 4. Environmental Effects:

4.1 Threatened, Endangered Species

Most of the project area is already disturbed but the project will create 0.04 acres of new surface disturbance and it is adjacent to undisturbed, contiguous habitat wherein potential corridors for tortoise entry exist. Since tortoises have been found in the vicinity, and undisturbed habitat exists in and adjacent to the project site, there is potential for tortoises to wander into the project area. If not noticed and avoided during construction and maintenance activities, desert tortoises could be either injured or killed (by crushing) or harassed (by being moved out of harm's way).

Section 7 Consultation for this project is covered under the Programmatic Biological Opinion (84320-2010-F-0365.R003) contingent on compliance with the terms and conditions. Terms and conditions and minimization measures in the above Biological Opinion contain measures to reduce potential impacts, including take, to desert tortoise. This project will require an authorized desert tortoise biologist, monitor, FCR or other approved by the BLM to present an education program (see Term and Condition 1.e.) and an authorized desert tortoise biologist to be on call to relocate any desert tortoises that enter the work area per Terms and Conditions provided. Due to the minimal amount of new disturbance, remuneration fees will not be required for this project. As described in the attached terms and conditions, the applicant must also comply with the following measure (see Term and Condition 8.d.):

1. Trenches for the underground sewer line shall be backfilled or covered at the end of each day during hours of inactivity to prevent animals from inadvertently falling in.

Chapter 5. Cumulative Impacts:

5.1 Cumulative Impacts

The October 1998 RMP EIS identifies general management directions for the BLM on approximately 3.3 million acres of federal lands in Clark and a portion of southern Nye Counties in Nevada. Additionally, Las Vegas Valley Disposal Boundary EIS, ROD signed December 23, 2004, addressed the disposal of federal lands and the continued development within the Las Vegas Valley in accordance with the Southern Nevada Public Lands Management Act of 1998 (PL 105-263). Subsequent to the RMP and Las Vegas Valley Disposal Boundary EIS, the BLM has completed numerous other documents which are related to specific uses and/or geographic locations throughout the area.

Cumulative Impacts The CEQ (40 CFR 1508.7) defines cumulative impacts as: "...the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions." The actions include current and project area development, management activities, and authorizations on private and public land, land use trends, and applicable industrial/infrastructure components. Although the individual impacts of each separate project may not be significant, the additive effects of multiple projects could be. These past, present, and reasonably foreseeable future actions are analyzed to the extent that "they are relevant and useful in analyzing whether the reasonably foreseeable effects of the agency proposal for action and its alternatives may have an additive and significant relationship to those effects."

The geographic area for the cumulative effects analysis is the area within a half mile (2,640 feet) of the proposed action. The geographic area was chosen to capture the majority of the cumulative uses in the nearby area.

5.1.2. Past, Present, and Future Actions

Past actions are those that are presently existing, present actions are considered to be those occurring at the time of this evaluation, and future actions are those that are in planning stages with a reasonable expectation of occurring within the next ten years. The timeframe for future actions was set at ten years, to align with the internal BLM standards for planning and due to the inability to extrapolate meaningfully beyond that time period due to the immense growth and development in the Southern Nevada District, LVFO planning area.

Past and Present Actions.

The proposed ROW areas are located in a developed urban area interspersed with federal lands. A portion of the proposed ROW overlaps or is adjacent to part of the Clark County roadway ROW, N-75197 and South West Gas underground pipeline ROW N-60107. Other past and current development in the area consists of residential and commercial facilities with numerous

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supporting ROW's for utilities, and public uses such as roadway, drainage, water, and sewer.

Future Actions

Potential future actions which would either overlap or be on adjacent Federal lands to the proposed project area would likely include either modification to existing facilities/uses or new facilities with a similar purpose/use.

However, analysis of these actions would require compliance with the appropriate BLM supplemental authority(s) once the specific alignment and scope of the project were defined and analyzed.

Any past, current, or future projects within the vicinity of the proposed action, would be required to comply with all federal, state, and local regulations.

Chapter 6. Tribes, Individuals, Organizations, or Agencies Consulted:

Table 6.1. List of Persons, Agencies and Organizations Consulted

| Name | Purpose & Authorities for Consultation or Coordination |
|----------------------------|---|
| Bill Garrett, Ventajas LLC | Consultant |

Chapter 7. List of Preparers:

Table 7.1. List of Preparers:

| | | |
|-------------------|----------------------------------|--|
| Lisa Christianson | HMRR and Air Resource Specialist | Air Quality, Greenhouse Gas Emissions, and Hazardous Waste. |
| Benjamin Klink | Natural Resource Specialist | Fuels/Fire Management, and Invasive Species. |
| Stan Plum | Archaeologist | Cultural Resources, Native American Religious Concerns, and Paleontology. |
| Krystal Johnson | Resource Specialist | Farm Lands Prime and Unique, Wild Horse and Burros. |
| Boris Poff | Hydrologist | Flood Plains, Hydrology, Soils, Water Resources, and Wetland/Riparian. |
| Evan Allen | Geologist | Geology/Mineral. |
| Kerri-Anne Thorpe | Realty Specialist | Lands/Access, Environmental Justice, Socio-Economic, and Visual. |
| Ashley Fisher | Natural Resource Specialist | Livestock Grazing, Rangeland Health Standards, T&E or candidate plant species, Woodlands/Forestry, and Vegetation. |
| Randy Kyes | Natural Resource Specialist | BLM Natural Areas, Recreation, Wild and Scenic Rivers, Wilderness, and Lands with Wilderness Characteristics. |
| Mathew Hamilton | Natural Resource Specialist | ACEC, Fish and Wildlife excluding Federally listed species, Migratory Birds, T&E or candidate animal species. |

APPENDIX A
STIPULATIONS

Exhibit A
Stipulations for N-92992

1.0 Special Stipulations

- 1.1. The Holder shall notify the Bureau of Land Management (BLM), Wildlife Biologist staff, at 702-515-5000 of their construction schedule at least 10 days before initiation of the project. Failure to abide by the terms and conditions of the grant and Biological Opinion, could result in temporary suspension of all activities within your right-of-way area per 43 CFR 2807.16 and 43 CFR 2807.17.
- 1.2. Should a tortoise be killed, injured, handled, or penned, you will need to have an Authorized Desert Tortoise Biologist complete Appendix E (see attached Terms and Conditions for Biological Opinion). Please forward Appendix E to the BLM, Attn: Wildlife Biologist, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130. Failure to abide by the terms and conditions of the grant and Biological Opinion, could result in temporary suspension of all activities within your ROW area per 43 CFR 2807.16 and 43 CFR 2807.17.
- 1.3. The Holder must complete and return Appendix G (see attached Terms and Conditions for Biological Opinion) herein annually and/or upon completion of construction of the project. Please forward Appendix G to the BLM, Attn: Wildlife Biologist, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130. Failure to abide by the terms and conditions of the grant and Biological Opinion, could result in temporary suspension of all activities within your ROW area per 43 CFR 2807.16 and 43 CFR 2807.17.
- 1.4. The Holder must abide by monitoring, maintenance, and reporting requirements per the Biological Opinion. Failure to abide by the terms and conditions of the grant and Biological Opinion, could result in temporary suspension of all activities within your ROW area per 43 CFR 2807.16 and 43 CFR 2807.17.

2.0 General Stipulations

- 2.1. The right-of-way (ROW) is issued subject to all valid existing rights.
- 2.2. No signs of advertising devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the authorized officer.
- 2.3. The ROW shall be maintained in a sanitary condition at all times. Waste materials at those sites shall be disposed of promptly at an approved waste disposal site. "Waste", as used in this paragraph, shall mean all discarded matter of any kind.
- 2.4. The holder shall ensure that the road has a proper drainage system and should include the best combination of various design elements, such as ditches, culverts, drainage

dips, crowns, low-water crossings, subsurface drains and bridges, per Clark County standards.

- 2.5. Holder shall mark the exterior boundaries of the ROW with stake and/or lath at 100 to 200 foot intervals. The intervals may be varied at the time of staking at the discretion of the Authorized Officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the Holder. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed.
- 2.6. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this ROW within its authorized limits.
- 2.7. Holder shall maintain the ROW in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.
- 2.8. Pursuant to 43 CFR 2807.17(a) and 43 CFR 2807.17 (3)(c), BLM may suspend or terminate your grant if you do not comply with applicable laws and regulations or any terms, conditions, or stipulations of the grant (such as rent payments), or if you abandon the right-of-way. Failure to use your right-of-way for its authorized purpose for any continuous 5-year period creates a presumption of abandonment.
- 2.9. Holder shall maintain copy of the authorization along with stipulations on construction site at all times. In the event that the public land underlying this ROW, encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the ROW, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the ROW, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

- 2.10. Within 90 days of construction completion, the Holder shall provide the Authorized Officer with data in a format compatible with the Bureau's Arc-Info Geographic Information System to accurately locate and identify the ROW:

Acceptable data formats are:

Corrected Global Positioning System files with sub-meter accuracy or better, in UTM NAD 83; Zone 11;

ARCGIS export files on a CD ROM, shapefile, geodatabase.

Data may be submitted in any of the following formats:

ARCGIS interchange, shapefile or geodatabase format.

CD ROM in compressed or uncompressed format.

All data shall include metadata for each coverage, and conform to the Content Standards for Digital Geospatial Metadata Federal Geographic Data Committee standards. Contact the GIS Department at (702) 515-5000.

3.0 Air Quality

- 3.1. The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The Holder shall be responsible for dust abatement within the limits of the ROW and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the ROW.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder will cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

- 3.2. Ensure a dust control permit is obtained through Department of Air Quality (DAQ) for all soil disturbing activity of .25 acres or greater, in the aggregate, and permit stipulations are in compliance for the duration of the project(s).
- 3.3. Prior to relinquishment, abandonment, or termination of this ROW, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.
- 3.4. During excavation, backfilling, and contouring, the disturbed soil should be wetted sufficiently in order to effectively reduce airborne dust and reduce soil erosion.

4.0 Geology/Mineral Resources

- 4.1. If excavation that produces mineral materials within the ROW is necessary, the mineral materials must be used within the ROW or stockpiled on site for disposal by the BLM. If mineral materials are to be stockpiled on site for a future disposal, specific BLM use authorization in the form of a contract, free use permit, or material site right-of-way will be necessary before the stockpiled mineral materials can be removed from the ROW.
- 4.2. The proposed action may require importing of mineral materials during construction. If imported mineral materials are federally owned they need to be obtained in accordance with the regulations found at 43 CFR 3600 in the form of a contract or free use permit before they can be imported.
- 4.3. All mineral materials need to be used on site within the right-of-way or stockpiled on site for disposal by the BLM. If mineral materials are stockpiled on site for future disposal by the BLM, a mineral material contract, free use permit, or material site right-of-way must be issued by the BLM.

5.0 Invasive Species/Noxious Weeds

- 5.1. The project proponent will limit the size of any vegetation and/or ground disturbance to the absolute minimum necessary to perform the activity safely and as designed. The project proponent will avoid creating soil conditions that promote weed germination and establishment.
- 5.2. The project proponent will coordinate project activities with the BLM Weed Coordinator (702-515-5000) regarding any proposed herbicide treatment. If herbicide treatment is needed, the project proponent will prepare, submit, obtain and maintain a pesticide use proposal (PUP) for the proposed action. Weed treatments may include the use of herbicides, and only those herbicides approved for use on Public lands by the BLM.
- 5.3. The project proponent will begin project operations in weed free areas whenever feasible before operating in weed-infested areas.
- 5.4. BLM or the project proponent will determine equipment cleaning sites. These sites will be coordinated with the BLM. Project related equipment and machinery (this especially includes the nooks and crannies of undercarriages) will be cleaned of all mud, dirt and plant parts before moving into relatively weed-free areas and when leaving weed infested sites. Seeds and plant parts need to be collected, bagged and deposited in landfills through the waste disposal system when practical. (This is not meant to apply to service vehicles that will stay on roadways avoiding weed infested sites.)
- 5.5. Project workers need to inspect, remove, and dispose of weed seed and plant parts

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Exhibit A – Stipulations

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found on their clothing and equipment. Disposal methods vary depending on the project.

- 5.6. The proponent shall be responsible for controlling all undesirable invading plant species (including listed noxious weeds and other invasive plants identified as undesirable by federal, state or local authorities) within the boundaries of their authorization area and Bureau-authorized ancillary facilities (e.g. access and utility corridors), including all operating and reclaimed areas, until revegetation activities have been deemed successful and responsibility released by the authorized officer. Control standards and measures proposed must conform to applicable state and federal regulations.
- 5.7. The proponent shall use weed free seed for reclamation and for other organic products for erosion control, stabilization, or revegetation (e.g. straw bales, organic mulch) must be certified weed free.
- 5.8. The proponent is responsible for ensuring that all project related vehicles and equipment arriving at the site (including, but not limited to, drill rigs, dozers, support vehicles, pickups and passenger vehicles, including those of the operator, any contractor or subcontractor and invited visitors) do not transport noxious weeds onto the project site. The proponent shall ensure that all such vehicles and equipment that will be traveling off constructed and maintained roads or parking areas within the project area have been power washed, including the undercarriage, since their last off road use and prior to off road use on the project. When beginning off road use on the project, such vehicles and equipment shall not harbor soil, mud or plant parts from another locale. Depending on the site setting such as remoteness, or other site condition, the operator may be required to have an on-site wash area identified and readily available. If a noxious weed infestation is known or later discovered on the project site, project related vehicles or equipment that have traveled through such an infestation shall be power washed including the undercarriage prior to leaving the site, at an established, identified wash area. Wash water and sediment shall be contained in an adjacent settling basin. Should any vegetation emerge in the wash area or settling basin, it will be promptly identified and appropriately controlled if found to be an undesirable invasive plant.

6.0 Fuels/Fire Management

- 6.1. Compliance with fire restrictions current at time of project implementation will mitigate any risks introduced by the proposed actions. Specific, noncompliant activities may be waived on a case by case basis by a line officer after review and approval by the Fire Management Officer.

7.0 Cultural

- 7.1. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf on public or Federal

lands shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation. Any decision regarding suitable mitigation measures will be made by the Authorized Officer after consulting with the Holder. Holder shall be responsible for the resultant mitigation costs.

8.0 Hazardous Material/Pesticides/Liability

- 8.1. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the ROW area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.
- 8.2. The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the ROW potentially affecting the ROW of which the Holder is aware.
- 8.3. As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the ROW.
- 8.4. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the Authorized Officer. The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year. Pesticides shall not be permanently stored on public lands authorized for use under this ROW.
- 8.5. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any,

established by state law (as state law exists on the effective date of the ROW), the United States against any liability arising from the Holder's use or occupancy of the right-of way, regardless of whether the Holder has actually developed or caused development to occur on the ROW, from the time of the issuance of this ROW to the Holder, and during the term of this ROW. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the ROW.

Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or occupancy of the right-of way regardless of whether the Holder has actually developed or caused development to occur on the ROW from the time of the issuance of this ROW to the Holder and during the term of this ROW.

- 8.6. Mineral material generated, and not needed for the development of the proposed action within the ROW site, requires a specific BLM use authorization in accordance with regulations at 43 CFR 3600 prior to the removal of the excess mineral material.

9.0 Survey Monuments

- 9.1. Holder shall protect all survey monuments found within the authorization area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coast and Geodetic Survey benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If any of the above are to be disturbed during operations, the holder shall secure the services of a Professional Land Surveyor or Bureau cadastral surveyor to perpetuate the disturbed monuments and references using surveying procedures found in the Manual of Instructions for the Survey of the Public Lands of the United States and Nevada Revised Statutes, Chapter 329, Perpetuation of Corners. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monuments, the holder shall be responsible for the survey cost.

10.0 Land surface/Soil/Water/Riparian

- 10.1. Land surface treatment for areas previously disturbed: Following excavation, trenches will be backfilled with the excavated soil. The soil will be distributed and contoured evenly over the surface of the disturbed area. The soil surface will be left rough to help reduce potential wind erosion.

- 10.2. Land surface treatment for areas previously undisturbed: Strip the top three to six inches of soil material with associated plant material over all surfaces to be disturbed by construction. Stockpile this material along the course of construction will be salvaged and transplanted out of harm's way but still within the right of way. At the conclusion, including trench backfilling and compaction, replace the stockpiled soil with plant debris uniformly back on the surface of the disturbed area.
- 10.3. Soil/Water/Riparian/Floodplains: Applicant must follow guidelines set by the Clark County Regional Flood Control District (CCRFC) and Clark County specifications for design of drainage systems. If work is to occur in Ephemeral channels, need to consult with Army Corp of Engineers (ACOE) and Nevada Department of Environmental Protection (NDEP). For floodplains, the project is located within the Las Vegas Valley disposal boundary and the CCRFC is responsible for flood control. Federal Emergency Management Agency (FEMA) standards are applicable.
- 10.4. If drilling boreholes, holder needs to follow Nevada Administrative Code (NAC) protocols for drilling. Consult with ACOE to make sure you do not need a 404 permit. All holes should be drilled according to the Nevada Regulations for Water Well and Related Drilling, per NRS Statutes 534. All holes should be reclaimed according to NRS and NAC regulations and reclaimed immediately after drilling. If groundwater is intercepted, holes will need to be reclaimed appropriately. Additionally, applicant is responsible for obtaining any CWA permits from NDEP that may be necessary.

11.0 Migratory Birds

- 11.1. To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside the bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs from February 15th through August 31st.

If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge.

12.0 Threatened, Endangered or Candidate Animal Species

- 12.1. The holder will comply with the terms and conditions of the Biological Opinion File No. 84320-2010-F-0365.R002 for this project on file at the Bureau of Land Management, Las Vegas Field Office, and as shown below:

Case Number: N-92992
NEPA Project #: DOI-BLM-NV-S010-2014-0121-CX

TERMS AND CONDITIONS for ROWs: BO File No. 84320-2010-F-0365.R002

In order to be exempt from the prohibitions of section 9 of the Act, the Bureau must comply with the following terms and conditions and minimization measures, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

RPM 1: Applies towards lands and realty, ROWs, and mining actions and other activities that involve vehicle and equipment use, excavations, or blasting. BLM, and other jurisdictional Federal agencies as appropriate, shall implement or ensure implementation of measures to minimize injury or mortality of desert tortoises due to project construction, operation and maintenance; and most actions involving habitat disturbance.

Terms and Conditions:

- 1.a. *Field Contact Representative*—BLM shall ensure a Field Contact Representative (FCR) (also called a Compliance Inspection Contractor) is generally designated for each contiguous stretch of construction activity for linear projects or isolated work areas for non-linear projects. The FCR will serve as an agent of BLM and the Service to ensure that all instances of non-compliance or incidental take are reported. BLM has discretion over approval of potential FCRs; however, those who also may be acting as authorized desert tortoise biologists, and must also be approved by the Service (see Term and Condition 1.c). All FCRs will report **directly** to BLM and the Service.

The FCR, authorized desert tortoise biologist, and monitors (see Term and Condition 1.c.) shall have a copy of all stipulations when work is being conducted on the site and will be responsible for overseeing compliance with terms and conditions of the ROW grant, including those for listed species. BLM shall ensure the FCR and authorized desert tortoise biologists have authority to halt any activity that is in violation of the stipulations. The FCR shall be on site year-round during all project activities.

Within 3 days of employment or assignment, the project proponent and BLM shall provide the Service with the names of the FCR.

- 1.b. *Authorized desert tortoise biologist*—**required to be on call to relocate any desert tortoises that enter the work area that are in harm's way and act as the projects FCR per Terms and Conditions provided.**

All authorized desert tortoise biologists (and monitors) are agents of BLM and the Service and shall report directed to BLM and the proponent concurrently regarding all compliance issues and take of desert tortoises; this includes all draft and final reports of non-compliance or take. The initial draft report shall be provided to BLM and Service within 24 hours of the observation of take or non-compliance.

1. c. Authorized desert tortoise biologists, monitors, and the FCR (see Term and Condition 1.a.) shall be responsible for ensuring compliance with all conservation measures for the project. This responsibility includes: (1) enforcing the litter-control program; (2) ensuring that desert tortoise habitat disturbance is restricted to authorized areas; (3) ensuring that all equipment and materials are stored within the boundaries of the construction zone or within the boundaries of previously-disturbed areas or designated areas; (4) ensuring that all vehicles associated with construction activities remain within the proposed construction zones; (5) ensuring that no tortoises are underneath project vehicles and equipment prior to use or movement; (6) ensuring that all monitors (including the authorized desert tortoise biologist) have a copy of the required measures in their possession, have read them, and they are readily available to the monitor when on the project site.

An authorized desert tortoise biologist will serve as a mentor to train desert tortoise monitors and will approve monitors if required. An authorized desert tortoise biologist is responsible for errors committed by desert tortoise monitors.

An authorized desert tortoise biologist shall record each observation of desert tortoise handled in the tortoise monitoring reports. Information will include the following: location (GPS), date and time of observation, whether the desert tortoise was handled, general health and whether it voided its bladder, location desert tortoise was moved from and location moved to, unique physical characteristics of each tortoise, and effectiveness and compliance with the desert tortoise protection measures. This information will be provided **directly** to BLM and the Service.

An authorized desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related field. The biologist must have demonstrated prior field experience using accepted resource agency techniques. As a guideline, Service approval of an authorized biologist requires that the applicant have at least 60 days project experience as a desert tortoise monitor. In addition, the biologist shall have the ability to recognize and accurately record survey results and must be familiar with the terms and conditions of the biological opinion that resulted from project-level consultation

between BLM and the Service. All tortoise biologists shall be familiar with the field manual (Service 2009).

Potential authorized desert tortoise biologists must submit their statement of qualifications to the Service's Nevada Fish and Wildlife Office in Las Vegas for approval, allowing a minimum of 30 days for Service response. The statement form is available on the internet at:

http://www.fws.gov/nevada/desert_tortoise/auth_dt_form.htm.

Prior to final approval to begin work on the project, the authorized desert tortoise biologists will have read the required measures (terms and conditions and other stipulations) and have a copy of the measures available at all times while on the project site. BLM shall provide the appropriate agency contact for the project to the Service and the Service will include the forms with approval letters.

Biologists and monitors should be visibly identifiable on the project site, which may include use of a uniquely designated hardhat or safety vest color.

1. d. *Desert tortoise monitor*—Desert tortoise monitors assist an authorized desert tortoise biologist during surveys and serve as apprentices to acquire experience. Desert tortoise monitors ensure proper implementation of protective measures, and record and report desert tortoises and sign observations in accordance with Term and Condition 1.c. They will report incidents of noncompliance to the authorized desert tortoise biologist or FCR. No monitors shall be on the project site unless supervised by an authorized desert tortoise biologist or approved by the BLM.

If a desert tortoise is immediately in harm's way (*e.g.*, certain to immediately be crushed by equipment), desert tortoise monitors may move the desert tortoise then place it in a designated safe area until an authorized desert tortoise biologist assumes care of the animal.

Desert tortoise monitors may not conduct field or clearance surveys or other specialized duties of an authorized desert tortoise biologist unless directly supervised by an authorized desert tortoise biologist or approved to do so by the Service; "directly supervised" means an authorized desert tortoise biologist has direct sight and voice contact with the desert tortoise monitor (*i.e.*, within approximately 200 ft of each other).

Within 3 days of employment or assignment, the project proponent and BLM shall provide the Service with the names of desert tortoise monitors who would assist an authorized desert tortoise biologist.

- 1.e. *Desert tortoise education program*—A desert tortoise education program shall be presented to all personnel on site during construction activities by an agency or authorized desert tortoise biologist, monitor, FCR or other approved by the BLM. The Service, BLM, and appropriate state agencies shall approve the program. At a minimum, the program shall cover desert-specific Leave-No-Trace guidelines, the distribution of desert tortoises, general behavior and ecology of this species, sensitivity to human activities, threats including introduction of exotic plants and animals, legal protection (the definition of “take” will also be explained), penalties for violation of State and Federal laws, reporting requirements, and project measures in this biological opinion. All field workers shall be instructed that activities must be confined to locations within the approved areas and their obligation to walk around and check underneath and vehicles and equipment before moving them (or be cleared by an authorized desert tortoise biologist). Workers and project associates will be encouraged to carpool to and from the project sites. In addition, the program shall include fire prevention measures to be implemented by employees during project activities. The program shall instruct participants to report all observations of desert tortoise and their sign during construction activities to the FCR and authorized desert tortoise biologist.
- 1.f. *Vehicle travel*— Project personnel shall exercise vigilance when commuting to the project area to minimize risk for inadvertent injury or mortality of all wildlife species encountered on paved and unpaved roads leading to and from the project site. Speed limits will be clearly marked, and all workers will be made aware of these limits. On-site, personnel shall carpool to the greatest extent possible.
- During the desert tortoise less-active season (generally November through February), vehicle speed on project-related access roads and in the work area will not exceed 25 mph. All vehicles and construction equipment will be tightly grouped.
- During the more-active season (generally March through October), and if temperatures are above 60 but below 95 °F for more than 7 consecutive days, vehicle speed on project-related access roads and in the work area will not exceed 15 mph.
- 1.g. *Unauthorized access*— not required for this project.
- 1.h. *Desert tortoise clearance*—not required for this project.
- 1.i. *Desert tortoise in harm's way*—Any project-related activity that may endanger a desert tortoise shall cease if a desert tortoise is found on the project site. Project activities may resume after an authorized desert tortoise biologist or desert

tortoise monitor (see restrictions in Term and Condition 1.d.) removes the desert tortoise from danger or after the desert tortoise has moved to a safe area on its own.

- 1.j. *Handling of desert tortoises*—Desert tortoises shall only be moved by an authorized desert tortoise biologist or desert tortoise monitor (see restrictions in Term and Condition 1.d.) solely for the purpose of moving the tortoises out of harm's way. During construction, operation, and maintenance, an authorized desert tortoise biologist shall pen, capture, handle, and relocate desert tortoises from harm's way as appropriate and in accordance with the most current Service-approved guidance. No tortoise shall be handled by more than one person. Each tortoise handled will be given a unique number, photographed, and the biologist will record all relevant data on the Desert Tortoise Handling and Take Report (Appendix E) to be provided to BLM in accordance with the project reporting requirements.

Desert tortoises that occur aboveground and need to be moved from harm's way shall be placed in the shade of a shrub, 150 to 1,640 ft from the point of encounter. In situations where desert tortoises must be moved more than 1,640 ft (500 m), translocation procedures may be required. Translocation would likely result in a level of effect to the desert tortoise that would require the appended procedures.

If desert tortoises need to be moved at a time of day when ambient temperatures could harm them (less than 40 ° F or greater than 95° F), they shall be held overnight in a clean cardboard box. These desert tortoises shall be kept in the care of an authorized biologist under appropriate controlled temperatures and released the following day when temperatures are favorable. All cardboard boxes shall be discarded after one use and never hold more than one tortoise. If any tortoise active nests are encountered, the Service must be contacted immediately, prior to removal of any tortoises or eggs from those burrows, to determine the most appropriate course of action.

Desert tortoises located in the project area sheltering in a burrow during the less-active season may be temporarily penned in accordance with Term and Condition 1.k. at the discretion of an authorized desert tortoise biologist. Desert tortoises should not be penned in areas of moderate to heavy public use, rather they should be moved from harm's way in accordance with the most current Service-approved guidance (currently Service 2009).

Desert tortoises shall be handled in accordance with the Desert Tortoise Field Manual (Service 2009). Equipment or materials that contact desert tortoises

(including shirts and pants) shall be sterilized, disposed of, or changed before contacting another tortoise to prevent the spread of disease. All tortoises shall be handled using disposable surgical gloves and the gloves shall be disposed of after handling each tortoise. An authorized desert tortoise biologist shall document each tortoise handling by completing the Desert Tortoise Handling and Take Report (Appendix E).

- 1.k. *Penning*— not required for this project.
- 1.l. *Temporary tortoise-proof fencing*—Not required for this project.
- 1.m. *Permanent tortoise-proof fencing*—Not required for this project.
- 1.n. *Wildlife escape ramps*— Not applicable for the proposed action. See measure 8.d for trenches.
- 1.o. *Dust control*—Water applied to for dust control shall not be allowed to pool outside desert-tortoise fenced areas, as this can attract desert tortoises. Similarly, leaks on water trucks and water tanks will be repaired to prevent pooling water.
- 1.p. *Blasting*— Not applicable for the proposed action.
- 1.q. *Power transmission projects*—Not applicable for the proposed action.
- 1.r. *Timing of construction*—The BLM shall ensure that when possible, the project proponent schedules and conducts construction, operation, and maintenance activities within desert tortoise habitat during the less-active season (generally October 31 to March 1) and during periods of reduced desert tortoise activity (typically when ambient temperatures are less than 60 or greater than 95 °F).

All vehicles and equipment that are not in areas enclosed by desert tortoise exclusion fencing will stop activities in desert tortoise habitat during rainfall events in the more-active season (generally March 1 to October 31), and if temperatures are above 60 but below 95 °F for more than 7 consecutive days. The Field Contact Representative (FCR) or designee will determine, in coordination with the BLM and Service, when it is appropriate for project activities to continue.

RPM 2: **Predator Control— Applies to all actions.** *BLM, and other jurisdictional Federal agencies as appropriate, shall ensure their agency personnel, the project proponent, and their contractors implement the following measures to minimize injury to desert tortoises as a result of predators drawn to the project area from construction, operation, and minor maintenance activities:*

Terms and Conditions:

- 2.a. *Litter control, applies to all projects*—A litter control program shall be implemented to reduce the attractiveness of the area to opportunistic predators such as desert kit foxes, coyotes, and common ravens. Trash and food items will be disposed of properly in predator-proof containers with predator-proof lids. Trash containers will be emptied and construction waste will be removed daily from the project area and disposed of in an approved landfill. Vehicles hauling trash to the landfill or transfer facility must be secured to prevent litter from blowing out along the road.
- 2.c. *Monitoring and predator control*— Projects that may create nest sites for ravens: Not applicable for the proposed action.
- 2.d. *Evaporation ponds and open water sources*—Not applicable for the proposed action.

RPM 3: **Impacts to Desert Tortoise Habitat—Applies towards all actions that involve habitat impacts.** *BLM, and other jurisdictional Federal agencies as appropriate, shall ensure their agency personnel, the project proponent, and their contractors implement the following measures to minimize loss and long-term degradation and fragmentation of desert tortoise habitat, such as soil compaction, erosion, crushed vegetation, and introduction of weeds or contaminants from construction, operation, and minor maintenance activities:*

Terms and Conditions:

- 3.a. *Habitat protection plans*—BLM shall ensure that the applicants develop and implement an approved fire prevention and response plan, erosion control plan, and a weed management plan as required by associated BLM specialist and approved by BLM prior to surface disturbance.
- 3.b. *Restoration plan*—Not required.
- 3.c. *Minimizing new disturbance*—Cross-country travel outside designated areas shall be prohibited. All equipment, vehicles, and construction materials shall be restricted to the designated areas and new disturbance will be restricted to the minimum necessary to complete the task (*e.g.*, such as construction of one-lane access roads with passing turnouts every mile rather than a wider two-lane road).

All work area boundaries shall be conspicuously staked, flagged, or otherwise marked to minimize surface disturbance activities.

- 3.d. *Weed prevention*—Vehicles and equipment shall be cleaned with a high pressure washer prior to arrival in desert tortoise habitat and prior to departure from areas of known invasive weed and nonnative grass infestations to prevent or at least minimize the introduction or spread these species.
- 3.e. *Chemical spills*—Hazardous and toxic materials such as fuels, solvents, lubricants, and acids used during construction will be controlled to prevent accidental spills. Any leak or accidental release of hazardous and toxic materials will be stopped immediately and cleaned up at the time of occurrence. Contaminated soils will be removed and disposed at an approved landfill site.
- 3.f. *Residual impacts from disturbance*—Remuneration fees are not required for this project as the amount of new disturbance is minimal (0.04 acres).

RMP 7: **Compliance and Reporting—Applies towards all actions.** *BLM, and other jurisdictional Federal agencies as appropriate, shall ensure their agency personnel, the project proponent, and their contractors implement the following measures to comply with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements contained in this biological opinion:*

Terms and Conditions:

- 7.a. *Desert tortoise deaths*—The deaths and injuries of desert tortoises shall be investigated as thoroughly as possible to determine the cause. The Service (702/515-5230), BLM wildlife staff (702/515-5000) and appropriate state wildlife agency must be verbally informed immediately and within 5 business days in writing (electronic mail is sufficient). The Authorized Desert Tortoise Biologist shall complete the Desert Tortoise Handling and Take Report (Appendix E).
- 7.b. *Non-compliance*—Any incident occurring during project activities that was considered by the FCR, authorized desert tortoise biologist, or biological monitor to be in non-compliance with this biological opinion shall be immediately documented by an authorized desert tortoise biologist. Documentation shall include photos, GPS coordinates, and details on the circumstances of the event. The incident will be included in the annual report and post-project report.
- 7.c. *Fence inspection*—Fencing is not required for this project.
- 7.d. *Project reporting requirements*—Project proponents will provide BLM with compliance reports. Quarter (non-appended actions), annual, and comprehensive final project reports will be submitted to BLM and the Service's Nevada Fish and Wildlife Office in Las Vegas. Annual reports are required for all appended

actions (except those completed and provided in a prior annual report). Annual reports will cover the calendar year and are due April 1st of the following year (e.g., the annual report for calendar year 2013 is due April 1, 2014). Quarterly reports for non-appended actions are due 15 calendar days following the quarter. Final project reports are due within 60 days following completion of the project or each phase of the project.

The Programmatic Biological Opinion Report to the Fish and Wildlife Service (Appendix G) will be used for quarterly, annual, and final project reports, and shall include all Desert Tortoise Handling and Take Reports (Appendix E). If available, GIS shape files will be included.

- 7.e. *Operation and maintenance*—A written assessment report shall be submitted annually to the Service outlining the operation and maintenance activities that occurred over the past year.

Report to include: It will include frequency of implementation of minimization measures, biological observations, general success of each of the minimization measures. All deaths, injuries, and illnesses of endangered or threatened species within the project area, whether associated with project activities or not, will be summarized in the annual report. The report is due April 1 of each year.

- 7.f. *Restoration monitoring*—Not required for this project.

8: Minimization Measures

- 8.a. *The project applicant shall notify BLM wildlife staff at 702-515-5000 at least 10 days before initiation of the project.* Notification shall occur before any maintenance activities begin that will damage or remove vegetation, such as off-road vehicle travel for surveys, soil testing, and clearing vegetation off the project site. The purpose of the notification is to ensure that the proper education program is given and to review expectations for compliance with the terms and conditions of the biological opinion.
- 8.b. Overnight parking and storage of equipment and materials, including stockpiling, shall be in previously disturbed areas or areas cleared by a tortoise biologist. If not possible, areas for overnight parking and storage of equipment shall be designated by the tortoise biologist in coordination with BLM and project proponent, which will minimize habitat disturbance.
- 8.c. Within desert tortoise habitat, any construction pipe, culvert, or similar structure with a diameter greater than 3 inches stored less than 8 inches above the ground will be inspected for tortoises before the material is moved, buried, or capped.

- 8.d. **Trenches:** All trenches and holes will be covered, fenced or backfilled to ensure desert tortoises do not become trapped unless alternate measures are in place as agreed by BLM and the Service. If trenches or holes are to remain open during construction, they will be checked for tortoises at least four times a day, at the start of day, at mid-morning, early afternoon, and at the end of the work day. The trenches or holes will also be checked immediately before backfilling regardless of the season. Any tortoise that is found in a trench or excavation shall be promptly removed by an authorized desert tortoise biologist in accordance with the most current Service-approved guidance. If the authorized desert tortoise biologist is not allowed to enter the trench for safety reasons, the alternative method of removal must have prior approval by the Service.
- 8.e. **Ravens and other avian tortoise predators:** All towers and poles will be fitted with "bird-be-gone" or other perch deterrent devices: Not applicable for the proposed action.
- 8.f. **Vehicles:** All project/event-related individuals shall check underneath stationary vehicles before moving them. Tortoises often take cover under vehicles. All vehicle use will be restricted to existing roads. New access roads will be created only when absolutely necessary and only when approved by BLM. Workers shall not drive or park vehicles where catalytic converters can ignite dry vegetation and to exhibit care when smoking in natural areas. Fire protective mats or shields shall be used during grinding or welding.

Vehicles will comply with the posted speed limit. A Speed limit of 25 MPH shall be required on unposted county road and unpaved road and trails used to access the project site.

On-site personnel shall carpool to the greatest extent possible.

Minimization Measures to Minimize Threat of Nonnative Plants

- 8.g. **Rehabilitate, reclaim, or revegetate** areas subjected to surface-disturbing activities where feasible. Habitat will be reclaimed so that pre-disturbance conditions can be reached within a reasonable time frame. Reclamation may include salvage and transplant of cacti and yucca, recontouring the area, scarification of compacted soil, soil amendments, seeding, vertical mulch, and transplant of seedling shrubs. If necessary subsequent seeding or transplanting efforts may be required, should monitoring indicate that the original effort was not successful.

APPENDIX E. DESERT TORTOISE HANDLING AND TAKE REPORT

If a desert tortoise is killed or injured, immediately contact the U.S. Fish and Wildlife Service and BLM, by phone at the numbers below and complete Section 1 of the form.

Completed forms should be submitted to the BLM and Fish and Wildlife Service:

| | |
|---|---------------------|
| <p>Project Name: ROW for Road and Drainage and Related Facilities on Public Land</p> <p>NEPA No.: DOI-BLM-NV-S010-2014-0121-CX</p> <p>Case File No./SRP No.: N-92992</p> <p>BLM Section 7 log no.: NV-052-14-192</p> | <p>Report Date:</p> |
| <p>Fish and Wildlife Service Append File No.- n/a</p> | |
| <p>Authorized Desert Tortoise Biologist: _____</p> <p>Employed by: _____</p> | |
| <p>Section 1: Complete all information below if a desert tortoise is injured or killed in addition to initial contact described above.</p> | |
| <p>If tortoise was injured <input type="checkbox"/> or killed <input type="checkbox"/> (check appropriate box):</p> | |
| <p>Date and time found: _____</p> <p>Found by: _____</p> <p>GPS location (NAD 83): easting: _____ northing: _____</p> <p>No. of photos taken: _____</p> <p>Disposition: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> | |
| <p>Attach report with photos that describe in detail, the circumstances and potential cause of</p> | |

N-92992

Exhibit A – Stipulations
Page 19 of 25

injury or mortality. For injuries include name of veterinarian and detailed assessment of injuries.

Bureau of Land Management
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
702-515-5000

U.S. Fish and Wildlife Service
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
702-515-5230

Section 2: Complete all information below for each desert tortoise handled.

All instances of desert tortoise handling must be reported in this section and be included in the quarterly, annual, and final project reports.

Desert tortoise number: _____

Date and time found: _____ Sex of tortoise: _____

Air temperature when found: _____ Air temperature when released: _____

Tortoise activity when found: _____

Handled by: _____ Approx. carapace length

GPS location (NAD 83) found: easting: _____ northing: _____

GPS location released: easting: _____ northing: _____

Approximate distance moved: _____

Did tortoise void bladder; if so state approximate volume and actions taken:

Post handling or movement monitoring and observations:

Section 3: Complete for each tortoise burrow penned.

All instances of desert tortoise penning must be reported in this section and be included in the quarterly, annual, and final project reports.

Date and time of pen construction:

Began: _____ Completed: _____

Date and time pen removed:

Pen constructed by:

Why was tortoise penned?

How frequently was pen monitored?

Observations of desert tortoise behavior including time and date of observation:

Include photos of pen and burrow with report.

APPENDIX G. PROGRAMMATIC BIOLOGICAL OPINION (FILE NO. 84320-2010-F-0365) REPORT TO THE FISH AND WILDLIFE SERVICE

The information below should be completed by BLM or the Authorized Desert Tortoise Biologist for the project/action. Reports for all appended actions are required annually (due March 1 of each year for prior calendar year activities) and upon completion of the project/action.

Project Name: ROW for Road and Drainage and Related Facilities on Public Land

NEPA no.: DOI-BLM-NV-S010-2014-0121-CX

Case File no./SRP no.: N-92992

BLM Section 7 log no.: NV-052-14-192

☐

Annual Report

☐

Project Completion Report

1. Date: _____

2. Fish and Wildlife Service File No (for appended actions):

n/a

3. Species and critical habitat affected:

☐

Desert tortoise

☐

Desert tortoise critical habitat

Other (identify): _____

4. Project/action status:

☐

Not begun

☐

In progress*

☐

Completed date _____

If in progress, state approximate percent complete: _____

5. Desert tortoise habitat disturbed:

| Non-critical habitat | | Critical habitat | |
|----------------------|--------------------|------------------|--------------------|
| Proposed | Actual disturbance | Proposed | Actual disturbance |

| | | | |
|------------------|------|------------------|------|
| disturbance (ac) | (ac) | disturbance (ac) | (ac) |
| 0.04 | | 0 | |

6. Habitat of other species disturbed (identify species, non-critical, and critical habitat affected below):

7. Summary of individual desert tortoises taken (appended action):

| Desert Tortoise: | | | |
|------------------|--------|-----------|------|
| | Adults | Juveniles | Eggs |
| Exempted | | | |
| Actual | | | |

Describe other individuals taken:

| |
|--|
| |
| |
| |

8. Name of authorized desert tortoise biologists and monitors on the project and the dates they were on the project.

9. Describe all non-compliance issues and events.

10. Desert tortoise burrow observed during activity/event:

Total number desert tortoises observed: _____

Total number desert tortoise burrows observed: _____

Attach a summary report detailing each desert tortoise and/or desert tortoise burrows observed during activity/event including tortoise activity when found, how the animal was avoided, what happened to the tortoise, the date and time encountered and GPS location (NAD 83 easting: _____ northing: _____)

11. Contact Information

Name _____ Company _____

Address _____

Phone _____

Signature _____ Date _____

Send completed form to:

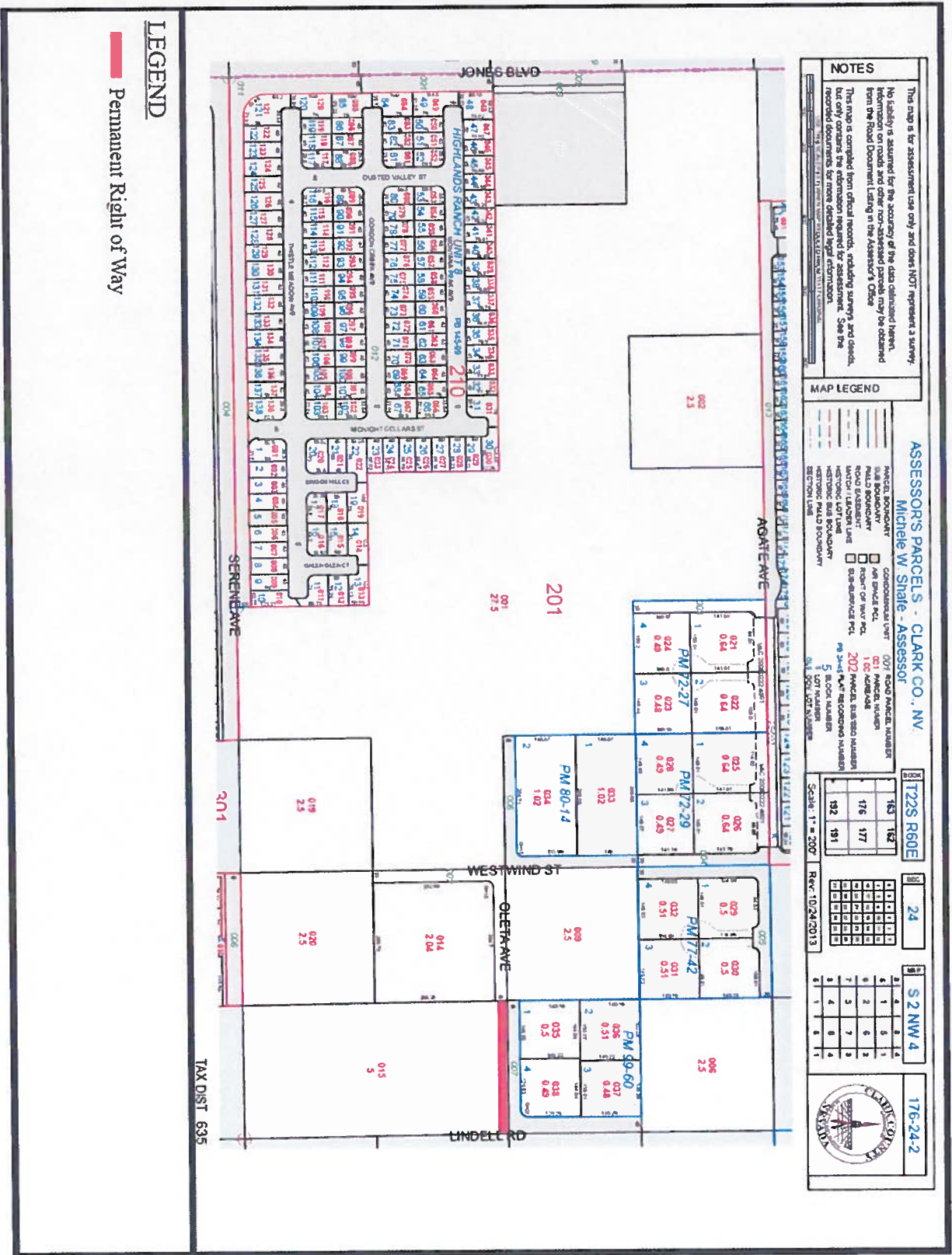
Bureau of Land Management
Attn: Wildlife Staff
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
702-515-5000

U.S. Fish and Wildlife Service
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
702-515-5230

APPENDIX B

MAPS

Exhibit B
Assessor's Map – N-92992



APPENDIX C

MASTER TITLE PLAT

TOWNSHIP 22 SOUTH RANGE 60 EAST OF THE MOUNT DIABLO MERIDIAN, NEVADA
CLARK COUNTY
LAS VEGAS CR DIST

